

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - FLINT

In re:

Case No. 03-20983-WS

MICHAEL L. BRANCH,

Chapter 13

Hon. Walter Shapero

Debtor.

ORDER (I) DENYING IN PART AND GRANTING IN PART DEBTOR'S MOTION FOR  
TURNOVER OF INCOME TAX REFUND AND TO HOLD THE IRS IN CONTEMPT AND  
(II) DENYING UNITED STATES' MOTION FOR RELIEF FROM STAY TO ALLOW IRS  
TO APPLY PRE-PETITION TAX OVERPAYMENT TO PRE-PETITION TAX LIABILITY

The matters having come before the Court on (I) Debtor's Motion for Turnover of Income Tax Refund and to Hold the IRS in Contempt and (II) United States' Motion for Relief from Stay to Allow IRS to Apply Pre-Petition Tax Overpayment to Pre-Petition Tax Liability; the Court having heard oral argument on the motion and having considered the briefs; the Court having adopted the Sixth Circuit Bankruptcy Appellate Panel's ("B.A.P.") reasoning in In re Shultz, 2006 Bankr. LEXIS 814 (B.A.P. 6th Cir. 2006), where the B.A.P. held that the IRS is not entitled to a lift of stay because no cause exists including the mere existence of a right to setoff tax overpayments against liabilities; the Court having also concluded that the Order Confirming Plan entered on July 24, 2003, is not specific and definite enough so as to justify awarding civil contempt sanctions against the IRS in light of the setoff issue now being decided by the Court. See Piggly Wiggly Clarksville v. Mrs. Baird's Bakeries, Inc., 177 F.3d 380 (5th Cir. 1999); and In re Seal, 192 B.R. 442 (Bankr. W.D. Mich. 1996); the Court having further concluded that Debtor has met the requirements for turnover of property pursuant to 11 U.S.C. § 542; the Court now orders the IRS pay over Debtor's 2003 tax

refund amount of \$4,491.00.

IT IS THEREFORE AND HEREBY ORDERED that Debtor's Motion for Turnover of Income Tax Refund and to Hold the IRS in Contempt is GRANTED in part and DENIED in part, and United States' Motion for Relief from Stay to Allow IRS to Apply Pre-Petition Tax Overpayment to Pre-Petition Tax Liability are DENIED. The IRS is HEREBY ORDERED TO PAY \$4,491.00 plus interest to the Chapter 13 bankruptcy estate.

**Entered: August 14, 2006**

/s/ Walter Shapero  
**Walter Shapero**  
**United States Bankruptcy Judge**